

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Sections of the)	
Cable Television Consumer Protection)	MM Docket No. 92-266
and Competition Act of 1992:)	
)	
Leased Commercial Access)	CS Docket No. 96-60

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COMMENTS OF THE FAITH & VALUES CHANNEL

The Faith & Values Channel L.L.C. ("Faith & Values") submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in this proceeding. Contrary to the Congressional mandate of promoting diversity and competition among programming sources, the Commission's proposed revisions to its leased access rules appear likely to decrease both programming diversity and competition.

The Faith & Values Network is a 24-hour-per-day cable programming service containing a mix of religious, moral/ethical, values-based and family-oriented programming seeking to build bridges of understanding among all people, to promote the values of love, justice, reconciliation and hope, and to introduce perspectives of faith and values into public and civil discourse while respecting the dignity of all peoples. In contrast to numerous other religious broadcasters, Faith & Values is interfaith and does not permit solicitation of funds, proselytizing or maligning any religious groups in its program service. The non-profit National Interfaith Cable Coalition ("NICC"), a consortium of 64 Protestant, Jewish, Roman Catholic and

Eastern Orthodox faith groups and evangelical traditions, owns a controlling interest in and provides programming to Faith & Values. A list of the faith groups participating in NICC is annexed as Attachment A. As a result of continuous efforts over the past seven years, Faith & Values is now available to 25.5 million cable subscribers.

1. The Commission's Proposed Valuation Formula Appears to Be Fundamentally Flawed.

After carefully reviewing the Commission's proposed "opportunity cost" pricing mechanism for leased access channels, Faith & Values has concluded that the proposed formula is likely to yield little or no cost to the lessee when a programming service offered on a regulated tier is deleted for a leased access channel.¹ Such result cannot represent the maximum cost of such channel capacity, recognizing that cable operators always may negotiate a lower rate than the maximum. Instead, the Commission's proposal appears to result in subsidized leased access for which other programmers, subscribers, and cable operators will pay the bill.

By focusing solely on the narrowly-defined "opportunity costs" of the particular channels to be deleted for leased access carriage, the Commission ignores the real value of programming services, such as Faith & Values, which attract additional subscribers to cable service. When families are searching for values-based and family-oriented programming, Faith & Values offers a programming alternative without subjecting subscribers to periodic solicitations for contributions to various "ministries" and faith sects. To the extent that carriage of Faith & Values encourages viewers to subscribe to basic service or another tier, its revenue

¹ Advertising revenues are likely to be minimal from the local "ad avails" on recently-launched services, which are the probable candidates for deletion. The benchmark revenues from the leased access channels will offset the lost revenue from the deleted channel because of the Commission's proposed carriage mandate.

contribution far exceeds its “benchmark” rate. Even if such contribution is difficult to measure, it is a significant element of value at the heart of a cable operator’s editorial discretion and cannot be ignored.

The Commission’s valuation methodology also understates the value of channel capacity by considering only the channels to be deleted for leased access. These channels are likely to have been launched recently and will not have reached their full revenue-generating potential from advertising or subscriptions if carried on other than basic service or a widely-distributed cable programming services tier (“CPST”). However, the channel capacity used to deliver these developing services is no less valuable. Consequently, the Commission’s revised methodology should, at the very least, calculate valuations across categories of programming services.

Finally, the Commission invites interested parties to demonstrate that “preferential treatment” is appropriate for non-profit leased access programmers, *i.e.*, “whether a lower maximum rate should apply.” Further Notice at ¶¶112-113. Although, consistent with the legislative history cited by the Commission, cable operators should be encouraged to negotiate lower than maximum rates with appropriate programming sources, such lower rates should not be required by the Commission.²

² The Commission also seeks comment regarding whether “certain types of for-profit programmers should also receive preferential treatment.” Further Notice at ¶115. For example, the Commission cites LPTV stations as a potential recipient of such preferential treatment. However, Congress clearly has identified those LPTV stations entitled to preferred cable carriage under the must-carry provisions of the 1992 Cable Act. See 47 U.S.C. §534(c). No further mandatory preferences should be accorded to LPTV stations or other for-profit entities.

2. Subsidized Leased Access Would Decrease Diversity by Requiring Widespread Deletions of Existing Programming.

The current shortage of channel capacity is well-established. In its last review of competition in the cable industry, the Commission found that “average channel capacity increased slightly” in 1994. Second Annual Report, CS Docket No. 95-61, FCC 95-491 (rel. Dec. 11, 1995), at ¶17. For example, the percentage of cable systems with thirty or more channels increased by a single percentage point. In contrast, the number of available cable programming networks increased by over 26.7 percent, from 108 to 128. Id. at ¶¶17, 19. A significant increase in the number of channels devoted to leased access because of unrealistically low and subsidized pricing would only worsen the channel capacity shortage and require cable operators to drop programming services presently available to viewers.

Faith & Values provides the very kind of diversity encouraged by Congress and sought by the Commission. However, because Faith & Values has made a conscious decision to exclude solicitations of contributions, it depends upon subscription and advertising revenues and is not well suited to widespread leased access carriage. In contrast, other religious programming services, particularly those which already have obtained cable carriage at Faith & Values’ expense through must-carry,³ have taken the opposite tack and actively solicit contributions throughout their programming schedules. Faith & Values respectfully submits that

³ Faith & Values lost substantial carriage and additional carriage opportunities because cable operators were required to carry religious broadcast stations. When NICC conducted a detailed review of religious broadcasting in 1993, it determined that more than 350 off-air local commercial and low-powered television stations were substantially owned or programmed by evangelical and/or fundamentalist religious faith groups. The “local stations” primarily were outlets for national religious programming networks.

the Commission should not further tilt the competitive balance in favor of those services by providing leased access carriage at virtually no cost.

3. Mandatory Preferential Carriage Further Increases the Competitive Imbalance.

The Commission also has tentatively concluded that leased access programmers “have the right to be placed on a tier, as opposed to being carried as a premium service” and that “BST and the CPST with the highest subscriber penetration qualify as genuine outlets.” Further Notice at ¶¶118-119. At the outset, Faith & Values notes that the Commission inexplicably has reversed its prior analysis of the same legislative history and its conclusion that leased access carriage should be a subject for reasonable negotiation:

Thus, we believe that channel placement or tier access is a matter that is best left in the first instance to negotiation between the parties bearing in mind the nature of the service being offered, the relationship between the charge imposed and the desirability of the channel, and the congressionally mandated objectives that leased channels provide competition in the delivery of programming and afford programmers genuine outlets. Given the diversity of possible access uses, we do not believe it desirable at this time to attempt an a priori allocation scheme.

Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, 8 FCC Rcd. 5631 (1993), at ¶498 (notes omitted).

Mandatory carriage preferences for leased access channels would place Faith & Values at a potentially insurmountable competitive disadvantage. There is a limit to the number of channels which cable operators can package on basic service or the most popular CPST. Time and time again such carriage has been at the heart of Faith & Values’ carriage presentations and negotiations and its programming decisions. Depending upon the cable system’s existing channel line-ups and capacity and subscriber interest, Faith & Values has obtained carriage on basic service and high-penetration of CPSTs. However, if the Commission

requires cable operators to grant religious leased access programmers preferential carriage, it will be difficult for Faith & Values to obtain carriage on the same tiers. Faith & Values respectfully submits that 47 U.S.C. §532 does not authorize such preferential carriage -- where Congress intended specific types of channels to be carried on basic, such as must-carry and PEG channels, it plainly said so. Clearly, a tier or other package of leased access channels, which subscribers could select, would constitute a "genuine outlet" for leased access programming provided that such tier or package is technically available to subscribers.⁴

4. The Commission Should Adopt Transitional Rules to Minimize the Disruption Caused by Significant Changes in Leased Access.

If the Commission substantially revises the leased access rules by reducing the maximum allowable price and/or mandating preferred carriage, it should adopt a substantial transition period to the new rules. Before the Commission adopted the revised going-forward rules in late 1994, few cable operators added new programming services to their channel line-ups. New launches often were delayed indefinitely. Now, when the regulatory framework finally has stabilized, the Commission's proposed changes to its leased access rules would have a significant negative impact on cable programming services. The adoption of such rules would again require cable programmers to adjust their subscriber projections and programming budgets -- all of which takes time.

⁴ Likewise, minority and educational programmers should not be entitled to mandatory packaging on basic service or the most popular CPST. Further Notice at ¶132. Again, the Commission's imposition of such requirement is not supported by the statutory language and unjustifiably tilts the competitive balance in favor of such programmers.

Faith & Values also notes the following additional implementation issues:

- The Commission should broadly construe any requirement of “adequate and comparable capacity” for part-time leased access requests in order to minimize the deletion of and the disruption to existing programming services. Further Notice at ¶124.
- Leased access programmers, which seek only part-time carriage, should nonetheless be required to lease a full-time channel if their request requires the deletion of an existing programming service. As additional leased access programmers request carriage, the cable operator can reduce the original programmer’s commitment accordingly. Id.
- If cable operators are required to designate the channels to be deleted in order to satisfy the leased access set-aside, operators should be permitted to revise such designations periodically. The Commission’s limitation of annual redesignations unreasonably precludes programmers from negotiating for continued carriage.⁵ Id. at ¶100.
- The Commission should not authorize third-party resale of leased access carriage. Id. at ¶141. Cable operators already are required to provide leased access in minimal time increments.

Faith & Values respectfully submits that these additional modifications to limit the deletion of existing programming services because of part-time leased access requests and to provide programmers with an opportunity to negotiate with cable operators for leased access redesignations will reduce the programming disruptions resulting from revised leased access rules.

Conclusion

Faith & Values recognizes the Congressional mandate for leased access programming. However, consistent with the 1992 Cable Act, leased access should

⁵ Faith & Values does not believe that cable system operators uniformly have identified the programming services carried on leased access channels. Instead, some cable operators may have attempted to retain discretionary deletion rights on a system-by-system basis.

“promote competition in the delivery of diverse sources of video programming.” Leased access rules which provide for subsidized leased access or mandatory packaging so skew the regulatory framework that existing cable programmers such as Faith & Values will be unable to compete fairly for the retention of existing carriage, much less additional carriage. The Commission should revise its proposed rules to reflect the full value of channel capacity, to eliminate preferential pricing and packaging, and to adopt reasonable transition rules which will minimize the adverse impact of expanded leased access on existing programmers.

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Respectfully submitted,

THE FAITH & VALUES CHANNEL L.L.C.

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ATTACHMENT A

The membership of the National Interfaith Cable Coalition includes the following faith groups:

African Methodist Episcopal Church	Friends United Meeting (Quakers)	Reorganized Church of Jesus Christ of Latter Day Saints
American Baptist Churches	Greek Orthodox Archdiocese of North and South America	Roman Catholic Church
Christian Church (Disciples of Christ)	Jewish - New York Board of Rabbis	Salvation Army
Christian Holiness Association*	Lutheran Church-Missouri Synod	Seventh Day Adventist
Christian Reformed Church	Mennonite Church	Union of American Hebrew Congregations
Church of Jesus Christ of Latter-day Saints	Moravian Church	Unitarian Universalist Church
Church of the Brethren	National Council of the Churches of Christ in the U.S.A.**	United Church of Christ
Congressional Christian Churches	Presbyterian Church (U.S.A.)	United Methodist Church
The Episcopal Church	Reformed Church in America	
Evangelical Lutheran Church in America		

***Christian Holiness Association represents:**

Brethren in Christ
Evangelical Church of North America
Church of the Nazarene
Evangelical Methodist Church
Churches of Christian Union
Wesleyan Church
Evangelical Christian Church
World Gospel Mission
OMS International

****National Council of Churches represents:**

African Methodist Episcopal Zion Church
Antiochian Orthodox Christian Archdiocese of North America
Armenian Church of America
Christian Methodist Episcopal Church
Coptic Orthodox Church in North America
Hungarian Reformed Church in America
International Council of Community Churches
Korean Presbyterian Church in America
Moravian Church in America-Southern Province

National Baptist Convention of America
National Baptist Convention, USA, Inc.
Orthodox Church in America
Polish National Catholic Church of America
Progressive National Baptist Convention, Inc.
Religious Society of Friends
Russian Orthodox Church in the USA, Patriarchal Parishes
Serbian Eastern Orthodox Church in the USA and Canada
The Swedenborgian Church
Syrian Orthodox Church of Antioch
Ukrainian Orthodox Church of America

Associate Members

American Bible Society	Church Women United	National Conference
Churches of Christ Crusade for Christ	Religious Public Relations Council	